IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 16588 of 2007(Y)

PETITIONER:

A.R.RAJAN, PRESIDENT,
THE PAPPINISSERI CO-OP.MARKETING AND PROCESSING SOCIETY LTD.NO.C.1118.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS:

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1. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KANNUR.

2. THE KANNUR DISTRICT CO-OPERATIVE BANK, REPRESENTED BY ITS MANAGING DIRECTOR IN-CHARGE.

3. THE PRESIDENT, KANNUR DISTRICT CO-OPERATIVE BANK.

4. RAJ MOHAN, MANAGING DIRECTOR IN-CHARGE, KANNUR DISTRICT CO-OPERATIVE BANK.

5. V.RAVEENDRAN, S/O.SANKARAN, VELIYAMBRA HOUSE, NARATH, KANNUR.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SRI.N.NAGARESH
SRI.K.BABU
SMT.P.A.ANITHA FOR R6 & R8
GOVT.PLEADER SRI.P.N.SANTHOSH FOR R1
K.M.MOHAMMED KUNHI FOR R2 & R4

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.16588 of 2007

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Dated this the 8th day of June, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is the President of Pappinisseri Co-operative Marketing and Processing Society. Petitioner challenges Exts.P1 and P3 and seeks a declaration that respondents 2 to 4 had no manner of right to sanction loan without adequate security as contemplated by the rules and regulations and the loan sanctioned vide Ext.P1 without adequate security is illegal and unsustainable. Another prayer is to declare Ext.P1 unsustainable on the ground that the sanction is by the executive committee, which has no authority to sanction the loan.

2. According to the petitioner, the fifth respondent made an application for a personal loan and it came to be sanctioned vide Ext.P1 dated 8.8.2006. The Executive Committee has sanctioned the loan vide Ext.P1. It is stated that there was dispute in the Board of Directors meeting held on 22.6.2006 regarding the valuation of the security made by the officers and a three member Sub Committee was constituted to

revalue the security. The Sub Committee found that the valuation made by the officers is excessive and the real valuation is very low, so it is decided to demand the fifth respondent to furnish additional security and so the Board on 25.8.2006 decided to reject the loan. The Executive Committee again by resolution dated 18.9.2006 decided to demand fresh application and grant Rs.150 Lakhs after complying with all the legal formalities. There was a meeting on 22.5.2007 of respondents 3 and 4 with respondent No. 5 and it was decided to revalue the security and if it is found inadequate to grant Rs.150 Lakhs, then additional security is decided to be taken. It is further stated that the petitioner came to know that the third respondent has issued a stop memo. Petitioner preferred Ext.P2 representation. Thereafter petitioner came to know of Ext.P3 issued by the first respondent directing the third respondent to sanction Rs.300 Lakhs to the fifth respondent and report compliance. The contention of the petitioner is that the Executive Committee has no authority to sanction the loan. There was no adequate security, and the Board of Directors had decided not to sanction loan as there was no security, he contends.

Ext.P3 is stated to be issued on political reasons and there is no authority, it is stated.

3. Counter affidavit is filed by the fifth respondent inter alia stating that the Society of which the petitioner claims to be the President is itself defunct. It is further stated that Rs. 1.5 Crore was withdrawn as per cheque dated 12.9.2006. The fifth respondent was constrained to approach this court and this court by Ext.R5(b) judgment directed respondents 1 and 2 to consider and take a decision. It is in compliance with the above judgment that the Board of Directors resolved to disburse the remaining loan amount calling upon the fifth respondent to furnish additional security. Fixed Deposit to the tune of Rs.25 Lakhs standing in the name of the wife of the fifth respondent with the second respondent Bank was offered as security and the Bank noted lien thereon against special project loan. Balance amount was sanctioned on condition that Rs. One Crore will be released as first instalment and subsequent instalments will be released on the basis of utilisation of earlier instalments. It is said that the land and the building offered as security was valued at Rs.7,05,00,000/-.

Rs.One crore was deposited in the fifth respondent's current account and he has issued cheques to 15 parties for the project. Cheque was dishonoured. It is stated that bye-law 31 specifically authorises the Executive Committee to sanction the loan and advances.

4. Bank has also filed an affidavit, wherein it is inter alia stated that the Executive Body sanctioned a loan of Rs.4.5 Crores after considering the long business relationship, its financial capacity to pay back the loan, managerial competency, technical feasibility etc. Rs.1.5 Crore was already sanctioned on 18.9.2006. On the basis of the direction of this court and after obtaining legal opinion and the discussion held with the fifth respondent, the Board of Directors met on 22.5.2007 and decided to disburse the remaining loan amount on fresh evaluation of the assets pledged as security and on fresh terms regarding utilization of funds and interest etc. Thus the interest of the Bank was properly protected. It is stated that the Bank has agreed to sanction the loan on the ratio 50 : 50. That is the Bank would release the portion of loan amount only on the borrower investing an equal amount in the project. Thus the Bank is getting security for the

investment at 200%. The fifth respondent is a textile exporter having sufficient fixed and movable assets of his own, and the Bank has taken all precautions, it is stated.

5. I heard learned counsel for the petitioner, Senior Counsel Sri.O.V.Radhakrishnan appearing for the fifth respondent and other learned counsel also. I also heard Smt. P.A.Anitha appearing for additional respondents 6 to 8.

6. I feel that this writ petition is highly misconceived. The writ petition is filed by a person who claims to be the President of the Society, the connection of which Society with the second respondent Bank is that it is a member of the second respondent. There are atleast two good reasons for which the writ petition has to fail on prelimimary grounds. Firstly the petitioner cannot have any locus standi in the matter as he is only claiming to be the President of the Society. It is not as if the Society has come before this court challenging the grant of the loan. Secondly I am also impressed by the contention taken by the fifth respondent that the very Society of which the petitioner claims that he is the President going by Ext.R5(a) is .....

(defunct). In such circumstances, I feel that there is absolutely no basis for the petitioner approaching this court under Article 226 and seek this court's interference in what is essentially a commercial matter. On this ground this writ petition deserves to be dismissed. That apart I also feel that the main contention taken by the petitioner is that there is no power in the Executive Committee to sanction the loan. This contention can only be repelled having regard to bye-law 31 of the Bye-laws of the Bank which empowers the Executive Committee to sanction a loan. That apart, having regard to the pleadings which I have referred, I am of the view that there is absolutely no merit in the contention of the petitioner raised against the grant of the loan. It is to be noticed that the writ petition is not maintainable against a Co-operative Society as such. There are exceptions where the Society acts contrary to a statute or being vested with a public duty acts in breach of the same. On the whole I feel that there is no basis for interference by this court.

The writ petition is dismissed. No costs.

(K.M. JOSEPH, JUDGE)